IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No. 1775/2002.

Date of Decision: 28.5.2007.

Sanjeev Aggarwal. …Petitioner.

Versus:

Regional Manager S.B.I. and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes,

For the petitioner: Mr.Anshul Bansal, Advocate.

For Respondent-1. Mr.Anand Sharma, Advocate.

For Respondent-3. Mr.Ravinder Thakur, Central Govt. Counsel.

Sanjay Karol,J

The petitioner was employed with the respondents as Clerk-cum-Cashier in December, 1983. In August, 1988, he fell sick and did not report for duty. Since he did not inform, apply and seek leave he was treated as absent from duty w.e.f. 8th August,1988 to 25th March, 1989. Further vide letters dated 26th August, 1988 and 23rd January, 1989, he was directed by the respondents to report on duty and in the absence of any response, written or oral, the authorities were left with no option but to voluntarily retire the

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

petitioner w.e.f. 7.8.1988 in accordance with the condition of service governing him. This was conveyed to him vide letter dated 22nd Apirl, 1989

On a dispute raised by the petitioner, a reference was made by the Central Government to the Industrial Tribunal-cum-Labour Court, Chandigarh which was registered as Case No. I.D.197 of 1990 titled as General Secretary Vs. Regional Manager. Pleadings were exchanged by the parties and evidence led in support thereto. After examining the entire material on record, the Tribunal passed the award holding that before passing the order of voluntary retirement, the Bank was under no obligation to hold departmental enquiry and there was no necessity to comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') as the petitioner had chosen to absent himself from duty w.e.f. 8.8.1989 to 25.3.1989.It is this award which is a subject matter of challenge before this Court.

During the course of hearing, the record of the case was summoned and also perused. It is borne out from the record as has been correctly held by the Tribunal that the petitioner remained absent from duty without sanction or intimation w.e.f. 8.8.1988 to 25.3.1989. It is an undisputed case of the parties that the petitioner did not inform the respondents of his sickness. He did not apply for leave and his absence was not authorized by the authorities. The defence however is that vide letter dated 11.4.1989 though received by the respondent-Bank on 5.5.1989 i.e. after the date of retirement, petitioner had informed of his sickness. The fact that the petitioner had received two communications dated 26.10.1988 and 23.1.1989 from the Bank is not disputed.

Learned counsel for the petitioner argued that these letters singed by the Branch Manager who is not the Disciplinary Authority would not constitute a sufficient notice. However, this contention is not based on any of the service conditions and deserves to be rejected.

During the course of hearing, it was contended that on 25.3.1989 when the petitioner was on his way to join his duty he met with an accident and therefore could not report for duty. This explanation is also not acceptable for the reason that no intimation thereof in any form, was given to the respondents. In fact vide letter dated 23.1.1989, the petitioner was informed as under:

> "Unauthorized Absence from Duty
>
> Please refer to the memo No. Br. 13/125 dated 26.10.1988 calling upon you to report for duty. It is observed that you are continuing to be absent from duty since 8.8.1988.
>
> The above position is highly irregular and in contravention of the rules governing your service in the Bank. You are, therefore, hereby advised to report for duty within 30 days of the date of this notice. If you fail to do so, you will be deemed to have voluntarily retired from service on the expiry of this notice, in which case you would also be liable to pay to the Bank one month's pay and allowances in lieu of the notice."

In view of the decision of the apex Court in *Joseph Vs. State of Kerala* (2000) 5 Supreme Court Cases 197 and *Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd. and others* (2005) 5 Supreme Court Cases 337, the Tribunal has rightly held that there was no necessity for the respondent-Bank to hold an inquiry as the workman himself defaulted and did not report for the duty within the prescribed period as required under the bipartite settlement i.e. the conditions of service governing the petitioner.

It is settled law that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or

violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. ***(State of A.P. Vs. S. Sree Rama Rao***, reported in AIR 1963 SC 1723).

I see no reasons to interfere with the award. Petitioner has not been able to show which of his service conditions have been violated. In my view there has been proper compliance of principles of natural justice and every caution has been taken by the respondents before initiating action against the petitioner.

For the foregoing reasons, the writ petition is dismissed.

(Sanjay Karol),
Judge.

May 28, 2007(R)